



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date Amended	6/09/05	Bill No:	SB 565
Tax:	Property	Author:	Migden
Related Bills:			

BILL SUMMARY

This bill would exclude from the definition of change in ownership any transfer of property between registered domestic partners.

Summary of Amendments

Prior version of the bill contained provision for low-income housing unrelated to the Board.

ANALYSIS

Current Law

Under existing property tax law, real property is reassessed to its current fair market value whenever there is a “change in ownership.” (*Article XIII A, Sec. 2; Revenue and Taxation Code Sections 60 - 69.7*)

A transfer of property between registered domestic partners is generally considered a change in ownership triggering reassessment of that property. However, there are a few exceptions:

- Property Tax Rule 462.040 provides that in the case where property is owned by persons, including registered domestic partners, in the form of a “joint tenancy” then transfers of joint tenancy interests between these co-owners, under specified conditions, may not constitute a change in ownership.
- Property Tax Rule 462.240 provides that any transfer of separate property inherited by a surviving domestic partner by intestate succession upon the death of a registered domestic partner does not constitute a change in ownership.

Both of these provisions were the result of amendments operative November 13, 2003.

Section 62 of the Revenue and Taxation Code provides numerous definitional exclusions from change in ownership for a variety of ownership interest transfers in real property and legal entities.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.

Proposed Law

This bill would add subdivision (p) to Section 62 to provide that, commencing on January 1, 2006, change in ownership does not include any transfer between registered domestic partners. It also details the more common transfers of property interests between registered domestic partners such as those resulting from death, dissolution of a registered domestic partnership, and creating a trust.

With respect to Property Tax Rules 462.040 and 462.240, this bill provides that the recent amendments are retroactive to July 1, 2003.

A statement of legislative findings and declarations is included for each of these provisions.

In General

Property Tax System. California's system of property taxation values property at its 1975 fair market value, with annual increases limited to the inflation rate, as measured by the California Consumer Price Index, or 2%, whichever is less, until the property changes ownership or is newly constructed. At the time of the ownership change or completion of new construction, the value of the property for property tax purposes is redetermined based on current market value. The value initially established, or redetermined where appropriate, is referred to as the "base year value." Thereafter, the base year value is subject to annual increases for inflation. This value is referred to as the "factored base year value." This system results in substantial property tax savings for long term property owners.

Proposition 13. Proposition 13 was an initiative approved by voters on June 6, 1978 adding Article XIII A to the California Constitution, and established a new system of property taxation as described above. The initiative only contained about 400 words. Related to this bill, subdivision (a) of Section 2 of the initiative provided:

"The full cash value means the County Assessors valuation of real property as shown on the 1975-76 tax bill under 'full cash value', or thereafter, the appraised value of real property when **purchased**, newly constructed, **or a change in ownership has occurred** after the 1975 assessment. All real property not already assessed up to the 1975-76 tax levels may be reassessed to reflect that valuation." (*Emphasis added.*)

The initiative did not define "change in ownership" within its text. The ballot pamphlet did not define, nor did it discuss, the term "change in ownership." The only reference in the ballot pamphlet to the "change in ownership" concept is found in the Analysis of the Legislative Analyst. The Legislative Analyst states:

"For property which is sold or newly constructed after March 1, 1975, the assessed value would be set at the appraised (or market) value at the time of sale or construction." (*Emphasis added.*)

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Because, the language of the initiative failed to define this integral element, it fell to the Legislature to determine what constitutes a “change in ownership” and to define the term through legislation. Consequently, the statutory scheme defining “change in ownership” enacted after Proposition 13 was done so without specific constitutional mandate or authorization.

Task Force on Property Administration. Following the passage of Proposition 13, the Assembly Revenue and Taxation Committee appointed a task force to study existing property tax statutes in light of Proposition 13, and to recommend the appropriate changes to the Revenue and Taxation Code in light of the ambiguities of Proposition 13. The Task Force was a broad based 35-member panel that included legislative and Board staff, county assessors, attorneys in the public and private sectors, and trade associations. The Task Force issued its “Report of the Task Force on Property Tax Administration” to the Assembly Revenue and Taxation Committee on January 22, 1979.

Defining Change in Ownership. In defining change in ownership, the Task Force’s goal was to distill the basic characteristics of a “change in ownership” and embody them in a single test, which could be applied evenhandedly to distinguish between “changes” and “non-changes.” It ultimately concluded that a change in ownership is a transfer which has all three of the following characteristics:

- It transfers a present interest in real property.
- It transfers the beneficial use of the property.
- The property rights transferred are substantially equivalent in value to the fee interest.

The Legislature adopted this definition in Revenue and Taxation Code Section 60. Following the recommendation of the Task Force, the Legislature also included specific examples in Section 61 of transfers constituting a change in ownership and specific examples in Section 62 of transfers not constituting a change in ownership. In addition, Section 63, which sets forth the interspousal exclusion, was included in the original statutory scheme, prior to inclusion of the interspousal exclusion in the California Constitution via Proposition 58 in 1986. The Task Force recognized that transfers between a husband and wife satisfied the three elements for a change in ownership, but chose to specifically exclude transfers between husbands and wives from change in ownership anyway. The Task Force stated in its Report that it saw no reason to exclude some interspousal transfers, such as transfers involving joint tenancy or community property, but not other transfers, such as a transfer of separate property between spouses.

Background

Change in Ownership Exclusions. As previously stated, the term “change in ownership” was not defined by Proposition 13. Certain definitional “exclusions,” including the interspousal exclusion, were embodied in the initial statutory definitions necessary to implement Proposition 13’s change in ownership provisions. Thereafter, three other exclusions were statutorily provided as noted below.

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Bills	Year	Change In Ownership Exclusion	R&T Code
AB 1488	1979, Ch. 242	Numerous definitional exclusions <ul style="list-style-type: none"> • Change in method of holding title • Perfecting title • Security interests • Certain trusts • Retained life estates • Certain joint tenancies • Certain leases 	§62 (a) – (i)
AB 1488	1979, Ch. 242	Interspousal Transfers – including marriage dissolutions (subsequently amended into Constitution via Prop. 58)	§63
AB 2718	1982, Ch. 911	Parent to Minor Child Upon Death of Parent-Residence	§62(m)
AB 2890	1984, Ch. 1010	Parent to Disabled Child - Residence	§62(n)
AB 2240	1984, Ch. 1692	Purchases of Mobilehome Parks by Residents	§62.1, §62.2

Since Proposition 13, the Constitution has been amended twice to provide for additional change in ownership exclusions for certain family transfers. These transfers will not trigger a reassessment of the property to current fair market value. Instead, the property retains its prior base year value.

Prop.	Election	Change In Ownership Exclusion	R&T Code
58	Nov. 6, 1986	<ul style="list-style-type: none"> • Parent-Child • Interspousal- <u>statutorily</u> provided since 1979 	§63, §63.1
193	March 26, 1986	Grandparent–Grandchild	§63.1

Other constitutional amendments have been approved by voters permitting a person to “transfer” his or her Proposition 13 base year value from one property to another property, thereby avoiding reappraisal of the newly purchased property to its fair market value. In essence, this is another form of a change in ownership exclusion. Those constitutional amendments include:

Prop.	Election	Base Year Value Transfers	R&T Code
3	June 8, 1982	Replacement Property After Government Acquisition	§68
50	June 3, 1986	Replacement Property After Disaster	§69
60	Nov. 6, 1986	Persons Over 55 - Intracounty	§69.5
90	Nov. 8, 1988	Persons Over 55 - Intercounty	§69.5
110	June 5, 1990	Disabled Persons	§69.5
1	Nov. 3, 1998	Contaminated Property	§69.4

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Similar legislation previously before the Legislature, but not enacted, to exclude certain transfers from change in ownership, either through constitutional amendment or statutory amendment, include:

Bills	Year	Change in Ownership Exclusion
SCA 9	2002	Transfers of principal place of residence between co-owners who resided together for three years - County optional.
SCA 5	2003	Transfers of principal place of residence between co-owners who resided together for three years - County optional.
AB 205	2003	As introduced, stated that California has no legitimate state interest in denying rights related to tax laws, including, "nonreassessment of real property upon a spouse's death" to registered domestic partners.
AB 23	2003	Modified joint tenancy exclusions.

Therefore, as detailed in the tables above, some change in ownership exclusions are contained in statute, while others are contained in the Constitution. Also, in instances where the same person continues to own or reside in the property (such as the interspousal exclusion, placing property in a trust, creating a life estate, or purchasing the land under ones mobilehome), those exclusions have been statutorily authorized.

COMMENTS

1. **Sponsor and Purpose.** The author is sponsoring this measure in order "to guarantee equality for all Californians, regardless of gender or sexual orientation, and to further the state's interests in protecting Californians from the potentially severe economic and social consequences of abandonment, separation, the death of a partner, and other life crises." This bill also includes detailed legislative findings and declarations.
2. **Current law provides an interspousal change in ownership exclusion.** Section 63 provides that a change in ownership shall not include any interspousal transfer. This bill provides a similar exclusion for transfers between registered domestic partners. Persons eligible to register with the Secretary of State as domestic partners includes persons of the same sex in a committed relationship, as well as committed opposite-sex relationship where one partner is 62 years or older, that share a common residence.

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3. **This bill would eliminate the reassessment trigger when interests between registered domestic partners are transferred.** Generally, transfers of real property between co-owners with equal ownership in the property are subject to either a 0%, 50% or 100% reappraisal to fair market value as of the date of the transfer (typically the date of death or termination of the partnership). The percentage of the property subject to reappraisal depends upon how the property was held and the manner in which the co-owner was added to the title of the home. Under this bill, no reappraisal would occur and the property owner would continue to pay the same amount of property taxes on their property thereby preserving the property's Proposition 13 protected value.
4. **Proponents note that the fundamental argument to Proposition 13 was to ensure persons would not be "taxed" out of their home because they could not afford the property taxes based on its unrealizable current market value.** Property taxes at that time were based on current market values. While a home may increase in value, that increase in value is unrealizable unless the home is sold.
5. **Modifying "Change in Ownership" definitions.** Opponents of this measure state that a constitutional amendment is necessary to create the change in ownership exclusion. While Proposition 13 provided that a "change in ownership" would trigger reassessment, the term was not defined. Statutory language defines the term "change in ownership" and details various transfers that are included or excluded from "change in ownership." Therefore, statutory amendments could, arguably, modify those definitions initially established such as this bill proposes. In addition, proponents note that the interspousal exclusion was statutorily created (it was not amended into the constitution until 1986), and this bill would enact a similar provision.
6. **Property Tax Rules.** This bill would specify that Property Tax Rule 462.240 is retroactive to July 1, 2003, which is the date the provisions of the legislation, AB 2216 (Ch. 447, Stats. 2002), which predicated the regulation change was effective. The Board currently advises in [LTA 2004/23](#) that while the amendments to Rule 462.240 became effective on November 13, 2003, because it was declaratory of pre-existing statutory amendments to the Probate Code made by AB 2216, it therefore has a retroactive effective date of July 1, 2003. (According to the author's office, the retroactive provision for Property Tax Rule 462.040 will be amended out.)

COST ESTIMATE

The Board would incur some minor absorbable costs in informing local county assessors, the public, and staff of the law changes.

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REVENUE ESTIMATE**Background, Methodology, and Assumptions**

Personal residences. As of January 1, 2005, there were 25,525 domestic partnerships registered with the Secretary of State. The estimated number of households in California as of January 1, 2005, is 12.2 million. Registered domestic partnerships comprise 0.209 percent of all households in California. Based on reports from county assessors, there were more than 5.4 million properties receiving the homeowners' exemption in 2004. The number of owner-occupied residences owned by registered domestic partners is then estimated to be:

$$0.209\% \times 5.418 \text{ million} = 11,350$$

The average assessed value of properties receiving the homeowners' exemption in 2004 was \$234,000. The December 2004 median home price according the California Association of Realtors was \$474,000. The estimated amount of assessed value difference per home is then [\$474,000 – \$234,000], or \$240,000. The maximum total amount of affected value can be computed by multiplying the estimated number of homes of registered domestic partners by the assessed value difference:

$$11,350 \times \$240,000 = \$2.724 \text{ billion}$$

Generally, transfers of real property between co-owners with equal ownership in the property are subject to either a 0%, 50% or 100% reappraisal to fair market value as of the date of the transfer. Assuming that these transfers currently result, on average, in a 50 percent reappraisal, the total amount of affected value is:

$$\$2.724 \text{ billion} \times 50\% = \$1.362 \text{ billion}$$

Assuming a 4 percent annual rate of transfer, the estimated annual difference in assessed value for transfers of the personal residence between registered domestic partners is:

$$\$1.362 \text{ billion} \times 4\% = \$54.48 \text{ million}$$

Other Property. The estimated annual difference in assessed value for transfers of property other than the personal residence is \$32 million.

Revenue Summary

The estimated statewide annual forgone revenues of the proposal to exclude from the definition of change of ownership any transfer of property between registered domestic partners is:

Personal residence	\$54.48 million x 1% =	\$545,000
Other property	\$32 million x 1% =	<u>\$320,000</u>
Total		\$865,000

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Under this bill, local governments would receive the same amount of property taxes from affected properties when the property is sold or otherwise transferred to unrelated parties. At that later date, the property would be reassessed to its current fair market value.

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